

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §336.103.

### **Background and Summary of the Factual Basis for the Proposed Rule**

House Bill 2662 (HB 2662 or bill), 85th Texas Legislature, 2017, repeals the 5% gross receipts fee on all compact and federal waste disposal for the biennium beginning September 1, 2017. The 5% fee is deposited into the State's General Revenue. In Fiscal Years (FYs) 2015 and 2016, the agency collected \$4.3 million in revenue from the 5% surcharge. The revenue is anticipated to return to the current level once the fee is re-established on September 1, 2019. The bill was effective immediately.

### **Section Discussion**

The commission proposes to remove the 5% gross receipts fee in §336.103(f). Subsection (f) is proposed to be removed and subsection (g) is proposed to be re-lettered accordingly.

### **Fiscal Note: Costs to State and Local Government**

Maribel Montalvo, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are expected for units of local government as a result of the administration or enforcement of the proposed rule. Fiscal implications are anticipated for the State of Texas as there would

be a two-year loss of revenue for the General Revenue Account which is used to fund state government operations. These fiscal implications are not expected to be significant.

The proposed rule would implement portions of HB 2662. HB 2662 repeals the 5% gross receipts fee on all compact and federal waste disposed at the Texas Low Level Radioactive Waste facility for the biennium beginning September 1, 2017. HB 2662 reinstates the 5% gross receipts fee beginning September 1, 2019. Revenue from the 5% gross receipts fee has been deposited into the state's General Revenue Fund. For FYs 2015 and 2016, the agency collected and deposited to the General Revenue Fund approximately \$4.3 million (approximately \$2.15 million each year) in revenue from the 5% surcharge. The revenue is anticipated to return to this level again once the fee is re-established on September 1, 2019.

### **Public Benefits and Costs**

Ms. Montalvo also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated, from the changes in the proposed rule, will be compliance with state law.

No fiscal implications are anticipated for individuals as a result of the implementation or administration of the proposed rule. The proposed rule is expected to result in cost savings for party state and nonparty state compact as well as federal waste generators

who use the Texas Low Level Radioactive Waste facility for disposal. Cost savings could be expected for generators located both inside and outside the State of Texas. These generators will see a reduction in fees assessed to them for the disposal of low-level radioactive waste totaling approximately \$2.1 million each year until September 1, 2019. The fee reduction may result in attracting more waste generators to use the facility for waste disposal.

#### **Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### **Rural Communities Impact Assessment**

The commission reviewed this proposed rulemaking and determined that a rural community impact statement is not required because the proposed rule does not adversely affect a rural community in a material way for the first five years that the proposed rule is in effect.

#### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period

the proposed rule is in effect. The proposed rule is expected to result in cost savings for compact and federal waste generators who use the Texas Low Level Radioactive Waste facility for disposal. None of these generators are thought to be small or micro-businesses, but if they are, these generators will see a reduction in fees for the disposal of low-level waste at the compact facility until September 1, 2019.

#### **Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect small or micro-businesses for the first five-year period the proposed rule is in effect and is required by state law.

#### **Government Growth Impact Statement**

The commission reviewed this proposed rulemaking and determined that a Government Growth Impact Statement Assessment is not required because the proposed rule is required by state law.

#### **Draft Regulatory Impact Analysis Determination**

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the statute. A "major

environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment to Chapter 336 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because these revisions are required for TCEQ to comply with legislation requiring a two-year suspension of this fee for the biennium beginning September 1, 2017.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a

rule solely under the general powers of the agency.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Takings Impact Assessment**

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the proposed rulemaking constitutes a taking under the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007. The proposed rule does not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, restrict, or limit the owner's right to property nor reduce the value of an owner's property by 25% or more. Therefore, promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property in accordance with Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas

Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on December 12, 2017, at 10:00 a.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle in Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal

Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-032-336-WS. The comment period closes on December 22, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Hans Weger, Radioactive Materials Unit, (512) 239-6465.



## **SUBCHAPTER B: RADIOACTIVE SUBSTANCE FEES**

### **§336.103**

#### **Statutory Authority**

The amendment is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; THSC, §401.051, which provides for the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103(b), which requires the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which provides for general and specific licensing by rule with a few exceptions; THSC, §401.201, which requires the commission to directly regulate the disposal of low-level radioactive waste; and THSC, §401.2445, which requires a disposal facility license holder to transfer a percentage of gross receipts to the state general revenue fund. The proposed rule is also authorized by Texas Water Code (TWC), §5.103 which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and other laws of the state.

The proposed amendment will implement House Bill 2662, 85th Texas Legislature, 2017, which removes the 5% gross receipts fee on all compact and federal waste disposal for the biennium beginning September 1, 2017.

**§336.103. Schedule of Fees for Subchapter H Licenses.**

(a) An application for a low-level radioactive waste disposal site license under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be accompanied by a nonrefundable application processing fee of \$500,000. If the commission's costs in processing an application under Subchapter H of this chapter exceed the \$500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

(b) An applicant shall submit an annual fee for the actual costs incurred by the commission for hearings associated with an application for a low-level radioactive waste disposal site under Subchapter H of this chapter. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(c) A holder of a license for a low-level radioactive waste disposal site issued under Subchapter H of this chapter shall submit an annual license fee for the services received. This fee shall recover for the state the actual expenses arising from the

regulatory activities associated with the license. This fee shall include reimbursement for the salary and other expenses of the resident inspectors as provided by §336.743 of this title (relating to Resident Inspector). The executive director shall invoice for the amount of the costs incurred. Payment shall be made within 30 days following the date of the invoice.

(d) An application for a major amendment of a license issued under Subchapter H of this chapter must be accompanied by an application fee of \$50,000.

(e) An application for renewal of a license issued under Subchapter H of this chapter must be accompanied by an application fee of \$300,000.

[(f) The compact waste disposal facility license holder shall remit to the commission 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.]

(f) [(g)] The compact waste disposal facility license holder shall remit directly to the host county 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility

waste disposal facility as required in Texas Health and Safety Code, §401.244. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.